IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

STATE OF TENNESSEE, STATE OF MISSISSIPPI, STATE OF ALABAMA, STATE OF GEORGIA, STATE OF INDIANA, STATE OF KANSAS, COMMONWEALTH OF KENTUCKY, STATE OF LOUISIANA, STATE OF NEBRASKA, STATE OF OHIO, STATE OF OKLAHOMA, STATE OF SOUTH CAROLINA, STATE OF SOUTH DAKOTA, COMMONWEALTH OF VIRGINIA, AND STATE OF WEST VIRGINIA, *Plaintiffs*, v. ROBERT F. KENNEDY, JR., in his official capacity as Secretary of the United States Department of Health and Human Services; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; ANTHONY ARCHEVAL, in his official capacity as the Acting Director of the Office for Civil Rights; CENTERS FOR MEDICARE AND MEDICAID SERVICES; and MEHMET OZ, in his official capacity as Administrator for the Centers for Medicare and Medicaid Services, *Defendants*.	Civil Action No. 1:24-cv-161-LG-BWR

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

In 2024, the U.S. Department of Health and Human Services ("HHS") undertook an unlawful effort to distort the term "sex" discrimination under Section 1557 of the Affordable Care Act to encompass gender identity. *See Nondiscrimination in Health Programs and Activities*, 89 Fed. Reg. 37,522 (May 6, 2024) ("2024 Rule"). As this Court indicated in its opinion granting the Plaintiff States' request for preliminary relief, the 2024 Rule exceeds HHS's "statutory authority by applying the *Bostock*

holding to Section 1557's incorporation of Title IX." Mem. Op. & Order Granting Pls.' Mot. for Expedited Ruling, § 705 Relief, and a Prelim. Inj., ECF No. 29 ("Op."), at 22. At least two courts agreed and likewise entered preliminary relief against the 2024 Rule. *See Texas v. Becerra*, 739 F. Supp. 3d 522, 536 (E.D. Tex. 2024); *Florida v. HHS*, 739 F. Supp. 3d 1091, 1105-08 (M.D. Fla. 2024). Still others, including the U.S. Supreme Court, have since rebuffed arguments that Title IX's reference to "sex" extends to protect subjective concepts of gender identity. *See, e.g.*, *Dep't of Educ. v. Louisiana*, 603 U.S. 866, 867 (2024) (noting that "all Members of the Court today accept that plaintiffs were entitled to preliminary injunctive relief" against a separate rule extending Title IX to gender identity).

Yet despite its dispositive legal flaws, the 2024 Rule remains on the books, dormant only by virtue of preliminary rulings. With HHS having dismissed its appeal of the preliminary injunction, both sides now agree that this matter is amenable to disposition by this Court. *See* Joint Status Report Submitted to M.J. Rath 1 (Apr. 11, 2025). To bring this case and the 2024 Rule's unlawful chapter to a close, Plaintiffs States thus seek summary judgment under Fed. R. Civ. P. 56 to have the 2024 Rule's offending portions vacated and set aside. To promote regulatory certainty and stave off future cycles of rule-made harm, Plaintiff States also seek declaratory relief confirming their right to run programs under the proper reading of Section 1557 that does not conflate "sex" with gender identity.

For the reasons set out more fully in the accompanying memorandum in support of Plaintiff States' motion, summary judgment is warranted.

First, to the extent HHS opposes Plaintiff States' action on threshold grounds, those arguments fare no better than before. *See* Op. 9-10, 23-27 (rejecting HHS's contentions). All Plaintiff States have standing as parties directly regulated by the 2024 Rule, which also inflicts sovereignty and compliance-cost harms. Op. 23-27. Plaintiff States' claims remain justiciable despite recent Executive Branch developments. Whatever HHS's present view, the 2024 Rule remains a part of binding federal law. The 2024 Rule thus carries independent legal effect for Plaintiff States unless and until (i) HHS

formally rescinds the rule via required administrative procedures and (ii) any such action survives legal challenge. That process could take years, as still-pending litigation involving years' old 1557 rules illustrate. *See Walker v. Azar*, No. 1:20-cv-2834 (E.D.N.Y.) (case challenging 2020 Rule that repealed portions of 2016 Rule remains stayed). So long as the 2024 Rule remains operative, Plaintiff States' claims for vacating the 2024 Rule remain live.

Second, the 2024 Rule is plainly unlawful on several fronts. To grant summary judgment for Plaintiff States, this Court need only reaffirm its prior analysis that Title IX's reference to "sex," as incorporated into Section 1557, does not authorize HHS to impose mandates based on persons' subjective gender identity. *See* Op. 11-23. Statutory limits further bar the 2024 Rule's effort to usurp the States' role as the primary regulator of medicine by imposing an obligation to provide and subsidize risky "gender transition" interventions against the weight of medical evidence. Each ground independently demonstrates HHS's lack of statutory authority for the 2024 Rule and thus warrants vacatur. But if more merits reasons were needed, the 2024 Rule does not satisfy the Administrative Procedure Act's ("APA") requirement of reasoned and reasonably explained decision-making.

For the above reasons, this Court should grant summary judgment to Plaintiff States and vacate the offending portions of the 2024 Rule. Plaintiff States are also entitled to a declaration settling the Plaintiff States' rights under the correct interpretation of Section 1557 and Title IX, as the APA permits and as courts have granted in similar contexts. *See* 28 U.S.C. § 2201(a); 5 U.S.C. § 703.

Date: April 25, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2025, a true and correct copy of the foregoing document was filed via the Court's electronic filing system, which sent notice of filing to all counsel of record.

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